

**IN THE UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ROBERT SIMPSON	:	CASE NO.
	:	
Plaintiff	:	STATE COURT CASE NO. 49D05-2102-
	:	PL-006706
	:	
v.	:	JUDGE
	:	
APEX EXPRESS, INC. d/b/a.	:	
CORDELL TRANSPORTATION	:	
COMPANY, LLC	:	
	:	
Defendant.	:	

DEFENDANT’S NOTICE OF REMOVAL

Pursuant to 28 USC §§ 1332, 1441 and 1446, Defendant Apex Express Inc. d/b/a Cordell Transportation Company, LLC (“Defendant”) – the sole defendant in this action – by and through its undersigned counsel, hereby files this Notice of Removal to this Court of an action pending against it in the Marion County, Indiana Superior Court, Civil Division. Removal is based on the following grounds:

1. On February 25, 2021, Plaintiff Robert Simpson (“Plaintiff”) commenced an action against Defendant in the Marion County, Indiana Superior Court, Civil Division, in a case captioned *Robert Simpson v. Apex Express, Inc. d/b/a Cordell Transportation Company, LLC.*, No. 49D05-2102-PL-006706 (hereinafter, the “State Court Action”).

2. Attached hereto as Exhibit 1 are true and correct copies of the Complaint, the Docket, and the Summons.

3. All pleadings in the State Court Action have been attached to this removal.

4. There is only one defendant in this action.

TIMELY REMOVAL

5. On March 6, 2021, Plaintiff served a Summons and a copy of the Complaint on Defendant. A return of service reflecting the date of service is attached hereto as Exhibit 2.

6. This Notice of Removal is being filed within thirty (30) days after Defendant was served with the Summons and Complaint (March 6, 2021) in the State Court Action and, therefore, is timely pursuant to 28 U.S.C. § 1446(b).

JURISDICTION AND VENUE

7. The State Court Action is not a non-removable action as described in 28 U.S.C. § 1445.

8. This Court has jurisdiction under 28 U.S.C. § 1332.

9. Plaintiff is a resident of the State of Indiana.

10. Defendant is a corporation registered in the State of Ohio with its principal place of business located in Ohio.¹

11. Plaintiffs seek non-monetary relief and damages in excess of \$75,000. Plaintiff asserts a claim for retaliation under Indiana common law. This claim seeks to reinstate Plaintiff to a prior employment position with the same salary and seniority or front pay and benefits in lieu of reinstatement; lost wages and benefits; compensatory and punitive damages; any other damages deemed appropriate by the Court. In addition to lost wages, Plaintiff seeks damages for inconvenience, humiliation, embarrassment, anger, disgust, frustration, and “similar emotions.” It is thus apparent from the from the face of the Complaint that the amount in controversy

¹ The Complaint names only one Defendant – Apex Express, Inc. Accordingly, diversity with respect to Apex is all that is needed for this removal. However, should this Court desire the information of the “doing business as” – Cordell Transportation Co., LLC – this company is registered in the state of Ohio, its principal place of business is located in Ohio, and its members reside in Ohio and Michigan. Accordingly, diversity is appropriate even when considering the “doing business as” entity.

exceeds \$75,000. Accordingly, this Court has original diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332.

12. Venue is proper in the United States District Court for the Southern District of Indiana, Indianapolis Division pursuant to 28 U.S.C. §§ 1391 and 1441(a), because it encompasses the county in which this action is currently pending.

NOTICE

13. Pursuant to 28 U.S.C. § 1446(d), promptly upon the filing of this Notice, Defendant will serve written notice of removal to the Plaintiff through his counsel and Defendant will file a copy of this Notice of Removal with the Clerk of Court for the Marion County, Indiana Superior Court, Civil Division. A copy of Defendant's Notice to State Court of Removal of Action to Federal Court is attached hereto as Exhibit 3.

WHEREFORE, Defendant hereby removes this action now pending against it in the Marion County, Indiana Superior Court, Civil Division, to this Honorable Court, and requests that this Court retain jurisdiction for all further proceedings.

Respectfully submitted,

/s/ Donald G. Slezak
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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of March, 2021, the foregoing was filed through the Court's CM/ECF electronic filing system. A copy of this filing will be sent to all parties through the court's ECF system. If a party is not registered with the court's ECF system, a true and correct copy will be sent via email and U.S. Mail, postage prepaid, upon the following:

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